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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/035,199	01/04/2002	Gregory Newton Brewer	P 284145	2505

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EXAMINER

PATEL, MITAL B

ART UNIT PAPER NUMBER

3743

DATE MAILED: 10/09/2003

7

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/035,199

Applicant(s)

BREWER ET AL.

Examiner

Mital B. Patel

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --,

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 16 July 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 27-69 is/are pending in the application.
- 4a) Of the above claim(s) 28-56 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 27 and 57-69 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 January 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☒ Certified copies of the priority documents have been received in Application No. 09/469,954.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

## DETAILED ACTION

### *Election/Restrictions*

1. Applicant's election with traverse of claims 27 and 57-69 in Paper No. 5 is acknowledged. The traversal is on the ground(s) that the inventions are related in that they have a similar mode of operation. This is not found persuasive because the Examiner maintains that the inventions have a different mode of operation with claim 28 requiring an automatic titration mode, claims 29, 35, 43, and 49 directed to a percentile pressure all of which have different modes of operation.

The requirement is still deemed proper and is therefore made FINAL.

### *Specification*

2. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. **It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited.** The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

### *Claim Rejections - 35 USC § 102*

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the

applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 27 and 57-62, 64, 65, 66, and 69 are rejected under 35 U.S.C. 102(e) as being anticipated by Lundberg (US 5860418).

4. **As to claim 27**, Lundberg teaches a method for determining a mask-fit test pressure to be applied to a wearer's mask by ventilatory assistance apparatus, wherein the mask-fit pressure is adaptively determined from prior use (**See Col. 3, lines 16-25 and Col. 4, lines 28-52**).

5. **As to claim 57**, Lundberg teaches a method wherein the mask-fit pressure is determined based on a prior use by comparing leak flow to a threshold leak flow value (**See Col. 3, lines 16-25 and Col. 4, lines 28-52; also Col. 4, lines 53-61**).

6. **As to claim 58**, Lundberg teaches a method wherein the leak flow is determined over a predetermined time period (**See Col. 4, lines 28-52; also Col. 4, lines 53-61**).

7. **As to claim 59**, Lundberg teaches a method wherein the leak flow is determined based on a time constant of about 10 seconds (**See Col. 4, lines 28-52; also Col. 4, lines 53-61**).

8. **As to claim 60**, Lundberg teaches a method wherein the method is practiced with a CPAP device having two functional modes (**See Col. 2, lines 38-67**).

9. **As to claim 61**, Lundberg teaches a method wherein determining the mask-fit pressure includes sampling pressure signals in a gas supply assembly associated with the mask (**See Col. 3, lines 64-67, Col. 4, lines 1-27**).

10. **As to claim 62**, Lundberg teaches a method wherein sampling pressure signals occurs in a delivery tube (**See Col. 4, lines 44-52**) of the gas supply assembly.
11. **As to claim 64**, Lundberg teaches a method wherein sampling pressure signals occurs at predetermined intervals (**See Col. 3, lines 64-67, Col. 4, lines 1-27**).
12. **As to claim 65**, Lundberg teaches a method wherein the sampling occurs at about 20 millisecond intervals (**See Col. 4, lines 28-42**).
13. **As to claim 66**, Lundberg teaches a method wherein sampling pressure signals includes determining a flow of gas in the mask and generating a delivery pressure signal (**See Col. 4, lines 28-52; also Col. 4, lines 53-61**).
14. **As to claim 69**, Lundberg teaches a method further comprising varying at least one setting relating to test pressure intervals, test pressure period, and determined test pressure.

***Claim Rejections - 35 USC § 103***

15. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

16. Claims 63, 67, and 68 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lundberg in view of Rapoport et al (US 5535739).
17. **As to claim 63**, Lundberg teaches essentially all of the limitations except for wherein the sampling pressure signals occurs in a blower of the gas supply assembly.

However, Rapoport does teach the use of a blower-motor as a means of providing gas to the patient. Furthermore, the use of a blower-motor allows for the speed to be controlled at which the gas is supplied. Therefore, it would have been obvious to one of ordinary skill in the art to substitute the gas delivery device of Lundberg with that taught by Rapoport since they are mechanical expedients and the function of the gas delivery device is not altered with respect to delivering a gas to a patient and because the blower-motor allows for variation in the speed at which the gas is delivered.

18. **As to claim 67**, Lundberg teaches a method wherein determining the mask-fit pressure also includes processing the sampled pressure signals and producing a control signal based on the processed signals, wherein the control signal is provided to a motor to provide a determined treatment pressure (**See Col. 5, lines 64-67 and Col. 6, lines 1-13**).

19. **As to claim 68**, Lundberg teaches a method further comprising comparing a signal representative of actual delivery pressure with the control signal (**See Col. 5, lines 64-67 and Col. 6, lines 1-13**).

### ***Conclusion***

20. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US 6539940, US 6360741, US 6299581, US 6029664, US 5937855, US 5904141, US 5685296, US 5617849, US 5535738, US 5529056, US 5458137, US 5148802, US 5065756, and US 4765325.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mital B. Patel whose telephone number is 703-306-5444. The examiner can normally be reached on Monday-Friday (8:00 - 4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo can be reached on 703-308-1957. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

mbp



**WEILUN LO**  
**SUPERVISORY PATENT EXAMINER**  
**TECHNOLOGY CENTER 3700**